UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER AND EASY SOFTWARE SOLUTIONS, LLC.,

Defendants.

MOTION TO DISMISS COUNT III (NEGLIGENT MISREPRESENTATION) AND COUNT IV (BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING) OF DEFENDANTS' COUNTERCLAIM

Now comes the Plaintiff and Counterclaim-Defendant, JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty"), by counsel, and for its Motion to Dismiss Counts III & IV of Defendants' Counterclaim, states as follows:

1. The Defendants and Counterclaim-Plaintiffs Kenya Whitaker and Easy Software Solutions, LLC (collectively "Whitaker") filed a Counterclaim against Liberty alleging, among other things, Negligent Misrepresentation and Breach of an Implied Covenant of Good Faith and Fair Dealing. *See*, *Counterclaim*, p. 6-7.

2. The Virginia Supreme Court does not recognize the tort of Negligent Misrepresentation.

3. Likewise, Virginia does not recognize an independent tort claim for Breach of an Implied Covenant of Good Faith and Fair Dealing.

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4. The grounds for this Motion are more fully set forth in the accompanying memorandum of law.

WHEREFORE, in consideration of the foregoing, Liberty respectfully requests that this Court dismiss Counts III & IV of Defendants' Counterclaims for Negligent Misrepresentation and Breach of Implied Covenant of Good Faith and Fair Dealing.

Respectfully submitted,

JTH Tax, Inc. d/b/a Liberty Tax Service

By: ________________/s/______________________
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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